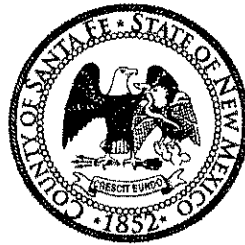


**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Ron Pacheco**  
*Executive Director*

**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**TO:** Santa Fe County Board of County Commissioners

**FROM:** James R. Pacheco, Executive Director

**DATE:** March 1, 2013

**RE:** Recognition of Tim Vigil

---

Tim Vigil served as the Community Board Member on the Santa Fe County Housing Authority Board from 2007-2012. His dedication to the mission of the Housing Board, the generosity of his time, the direction he provide and his outstanding service as the Community Board Member are greatly appreciated. With this memo we are proud to recognize the outstanding service that was provided to this board for the duration of his tenure. We wish Tim all the success in his continuing endeavors.

**Daniel "Danny" Mayfield**

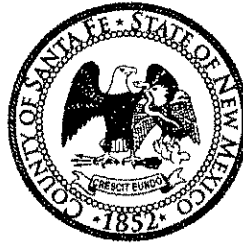
*Commissioner, District 1*

**Miguel Chavez**

*Commissioner, District 2*

**Robert A. Anaya**

*Commissioner, District 3*



**Ron Pacheco**

*Executive Director*

**Kathy Holian**

*Commissioner, District 4*

**Liz Stefanics**

*Commissioner, District 5*

**Katherine Miller**

*County Manager*

## **MEMORANDUM**

**TO: Santa Fe County Board of County Commissioners**

**FROM: James R. Pacheco, Executive Director**

**DATE: March 1, 2013**

**RE: Recognition of Santa Fe County Housing Authority Maintenance Staff**

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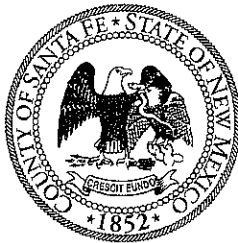
The Santa Fe County Housing Authority Maintenance Staff is being recognized for their diligence and dedication to the job in achieving a one hundred percent (100%) occupancy rate in Public Housing. A one hundred percent occupancy rate has never been attained since Santa Fe County took over the Housing Authority until now. The valuable contributions and consistent hard work displayed by the entire maintenance team are being recognized by the Board of County Commissioners.

NO PACKET MATERIAL  
FOR THIS ITEM

Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

**DATE:** February 27, 2013

**TO:** Board of County Commissioners

**VIA:** Katherine Miller, County Manager *KS*

**FROM:** Chris M. Barela, Constituent Service Liaison District 3

**RE:** A Resolution approving the Edgewood Senior and Community Center Garden Project

Board of County Commission meeting March 12, 2013

---

**BACKGROUND AND SUMMARY:**

Community and senior members of the Edgewood Senior Center have long desired to construct a garden and cold frames to grow fresh and healthy produce. Not only will this project provide for a supplemental and nutritional food system, but will also provide a physical, social and hands-on participation for our seniors. The community gardens will consist of an open garden on approximately .4 of an acre and placement of cold frames for sprouted seed trays.

Santa Fe County will purchase and install high commercial grade galvanized chain link fencing to enclose and secure the garden areas as well as a 20' long storage container to allow secure storage of garden supplies and equipment. Santa Fe County will also purchase and install a 50' sidewalk from the main walkway of the Senior Center to the open garden for safe and easy access for the seniors. In collaboration with the Cooperative Extension Service and the Soil and Water Conservation district, Santa Fe County will phase in and develop a rain water harvesting system and irrigation drip system.

The Senior and Community Center Garden Project will be funded in the amount of \$42,000 by the Commission Priority fund.

**REQUEST ACTION:**

Commissioner Robert A. Anaya respectfully requests that the Board of Santa Fe County Commissioners support this resolution to approve the Edgewood Senior and Community Center Garden Project.

**SANTA FE COUNTY**

**RESOLUTION NO. 2013-\_\_\_\_\_**

**A RESOLUTION APPROVING THE EDGEWOOD SENIOR AND COMMUNITY CENTER GARDEN PROJECT FUNDED BY THE COMMISSION PRIORITY FUND IN THE AMOUNT OF \$42,000 IN SUPPORT OF A COMMUNITY GARDEN AND COLD FRAMES TO PROVIDE HEALTHY AND NUTRITIOUS PRODUCE FOR THE SENIORS AT THE EDGEWOOD SENIOR CENTER IN EDGEWOOD NEW MEXICO**

**WHEREAS**, it is the desire of the community members of the Edgewood Senior Center in conjunction with Santa Fe County to construct a garden and cold frames to grow fresh and nutritious produce; and

**WHEREAS**, it is in the best interest of the welfare of the seniors of Santa Fe County to engage in the agricultural aspect of hands-on learning and to interact in some physical activity in a social setting in participating in the community gardens; and

**WHEREAS**, the community gardens of approximately .4 of an acre will allow for planting of an open garden and for the placement of cold frames for sprouted seed trays; and

**WHEREAS**, the community gardens will create a supplemental nutritional and healthy food system and may provide aid to those seniors who are most susceptible to food insecurity; and

**WHEREAS**, community members of the Edgewood Senior Center will assist in the gardens to produce pesticide free and completely organic vegetables and fruits; and

**WHEREAS**, Santa Fe County will purchase and install high commercial grade galvanized chain link fencing to enclose and secure the garden areas and a 20' long storage container to allow secure storage of garden supplies and equipment; and

**WHEREAS**, in addition Santa Fe County will purchase and install a 50' sidewalk from the main walkway of the Senior Center to the open garden to provide easy and safe access for the seniors; and

**WHEREAS**, Santa Fe County will purchase and install water storage tanks totaling 8,000 gallons and will collaborate with the Cooperative Extension Service and with the Soil and Water Conservation district to phase in and develop a rainwater harvesting system and a irrigation drip system that will be used to irrigate the gardens.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY as follows:**

That Santa Fe County approves the Edgewood Senior and Community Center Garden Project funded by the Commission Priority Fund in the amount of \$42,000 in support of a community garden and cold frames to provide healthy and nutritious produce for the seniors at the Edgewood Senior Center in Edgewood New Mexico.

**PASSED, APPROVED, and ADOPTED** this 12th day of March, 2013.

**THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**

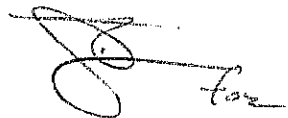
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Kathy Holian, Chair

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Geraldine Salazar, County Clerk

**APPROVED AS TO FORM:**

A handwritten signature in black ink, appearing to read "Stephen C. Ross", is written over a horizontal line.

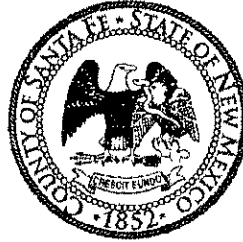
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Stephen C. Ross, County Attorney

Daniel "Danny" Mayfield  
*Commissioner, District 1*

Miguel M. Chavez  
*Commissioner, District 2*

Robert A. Anaya  
*Commissioner, District 3*



Kathy Holian  
*Commissioner, District 4*

Liz Stefanics  
*Commissioner, District 5*

Katherine Miller  
*County Manager*

## MEMORANDUM

**DATE:** March 1, 2013

**TO:** Santa Fe Board of County Commissioners

**FR:** Rita Maes, Constituent Services Liaison on behalf of Commissioner Miguel Chavez

**RE:** Resolution Establishing Procedures for Creating Fiscal Impact Reports

---

### Item and Issue:

Commissioner Chavez respectfully request adoption of Resolution 2013-\_\_\_\_ *A Resolution Establishing Procedures for the Introduction of Resolutions Which Might Have a Fiscal Impact on Santa Fe County or Which Create Or Amend Policy.*

### Background Summary:

This resolution sets uniform procedures for creating Fiscal Impact Reports and directing staff to report expected recurring cost for proposed new policy or amendments to existing policy, proposed new program services, new facilities, or land purchases. This resolution also sets a process for introducing resolutions which have an impact on county revenues.

### Action Recommendation:

Commissioner Chavez respectfully request adoption of this resolution.

**SANTA FE COUNTY**

**RESOLUTION NO. 2013-\_\_**

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**RESOLUTION 2013-\_\_**

**A RESOLUTION ESTABLISHING PROCEDURES FOR THE INTRODUCTION OF  
RESOLUTIONS WHICH MIGHT HAVE A FISCAL IMPACT ON SANTA FE COUNTY  
OR WHICH CREATE OR AMEND PROGRAMS OR POLICIES**

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**WHEREAS**, Santa Fe County recognizes the necessity of developing a uniform procedure for determining the fiscal impact of resolutions, including those creating new programs or policies, amending existing programs or policies, or for one time expenditures including real property acquisition and construction or acquisition of County facilities;

**WHEREAS**, a proper process for vetting resolutions which have a fiscal impact, create or amend policy, or implicate real property acquisition and construction or acquisition of County facilities, should include placement of a draft resolution on an agenda of the Board of County Commissioners (the BCC) for review and discussion only, as well as assignment of the draft resolution to the appropriate department for a financial impact analysis and/or a policy impact summary; and

**WHEREAS**, fiscal impact reports would be most useful if they provided cost projections and a cumulative forecast of the fiscal impact over the first four years following adoption of the resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS THAT** the following shall be Santa Fe County's uniform procedure for introducing resolutions which might have a fiscal impact on Santa Fe County or which create or amend policies or programs, including those approving real property acquisitions or construction or acquisition of County facilities, but not including budget adjustment resolutions or grant agreements:

1. A draft of each resolution shall be placed on the agenda for review and discussion at least one BCC meeting prior to being placed on a BCC agenda as an action item;
2. Each draft resolution shall also be assigned to the appropriate department for a financial impact analysis and an analysis of the impact of the new policy or program;
3. Staff will submit a report on the impact of the proposed new or amended policy or program as well as a fiscal impact report on the expected costs over the first four years following



adoption of the resolution, as part of the packet material for the BCC meeting at which the resolution may be adopted;

4. If real property acquisitions are proposed by resolution, the resolution must address the intended purpose of the acquisition, and any limitations or requirements associated with the real property;
5. The procedures set forth above may be waived by the BCC.

**PASSED, APPROVED, and ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
**Kathy Holian, Chair**

**Attest:**

\_\_\_\_\_  
**Geraldine Salazar, County Clerk**

**Approved as to form:**

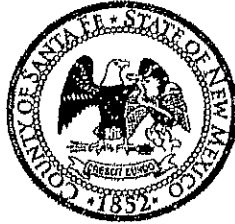
  
\_\_\_\_\_  
**Stephen C. Ross, County Attorney**

NO PACKET MATERIAL  
FOR THIS ITEM

Daniel "Danny" Mayfield  
*Commissioner, District 1*

Miguel Chavez  
*Commissioner, District 2*

Robert A. Anaya  
*Commissioner, District 3*



Kathy Holian  
*Commissioner, District 4*

Liz Stefanics  
*Commissioner, District 5*

Katherine Miller  
*County Manager*

March 1, 2013

Rose Marie Law, General Manager  
Jemez Mountains Electric Cooperative Inc.  
19365 S.R. 84/285  
Hernandez, NM 87537

RE: Rate Riders 4, 5 and 6

Dear Ms. Law,

I am writing on behalf of the Board of County Commissioners of Santa Fe County (the BCC), in response to the Notice to Ratepayers advising that Jemez Mountains Electric Cooperative, Inc. (hereinafter Jemez) will file three proposed rate riders under Advice Notice No. 63 on March 4, 2013. The Notice advised customers that rate increases were contemplated for three distinct segments of the customer base and encouraged customers to attempt to resolve objections to those proposed rate increases directly with Jemez. Additionally, NMAC 17.9.540.10 encourages customers to exhaust remedies within an electric cooperative prior to filing a protest of any proposed rate increases. The BCC acted at their February 26, 2013 meeting to authorize submission of a letter to Jemez requesting additional information about the contemplated rate riders and to express concerns regarding the proposed rate increases. The BCC will take action at their March 12, 2013 meeting regarding the filing of a protest with the Public Regulation Commission objecting to the proposed rate increases.

According to the Notice to Ratepayers, it appears that Rate Riders 4, 5, and 6 are proposed to provide revenue to Jemez to offset the expenses for Rights-of-Way on Native American Lands. Apparently the costs associated with Rights-of-Way will be allocated to customers within the exterior boundaries of each Pueblo rather than to the entire rate base. Santa Fe County (the County) is a customer within each of the three areas which might be subject to a rate increase.

One of the primary concerns is whether the cost of the Rights-of-Way is properly born solely by the customers within the exterior boundaries of the pueblo. It appears that a prior Rate Rider imposed the obligation on the entire customer base for certain portions of costs associated with Rights-of-Way on the Ohkay Owingeh Pueblo. Why isn't a similar allocation of cost contemplated for the Nambe, Pojoaque and San Ildefonso Pueblo Rights-of-Way expenses?

Can you explain, and provide documentation, concerning the elements of the Ohkay Owingeh Pueblo Rights-of-Way expenses that were incorporated into the rates of the

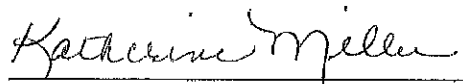
entire customer base and the elements that were imposed only on customers within the external boundaries of the Pueblo? Can you also explain, and provide documentation, that explain why the Rights-of-Way expenses associated with the Nambe, Pojoaque and San Ildefonso Pueblos are being imposed solely on customers within the external boundaries of each Pueblo?

In addition to information about the allocation of costs, we would like to understand the basis of the proposed rate; accordingly, can you provide confirmation of the number of customers within the entire customer base, and within the external boundaries of each Pueblo? For each rate rider, can you provide documentation of the amount sought to be recovered for System Rights-of-Way and for Local Rights-of-Way, the total acreage of each type of Right-of-Way within each Pueblo, the amount anticipated to be recovered for each, and over what period of time? Finally, the Notice only provides information regarding the estimated bill impacts for Rate Schedule 1; can you provide estimated impacts for Rate Schedules 2 through 18?

The BCC is quite concerned about the impact of rate increases; the proposed increases may be as high as 53.43% on a small portion of your customers. After you produce the requested information and documentation, I would like to meet with you to engage in a meaningful discussion about how your actual financial needs can be met without imposing such onerous rate increases on select Santa Fe County residents.

Please respond to this letter as quickly as possible and in enough time to engage in meaningful discussions about the rate increases before the March 12, 2013 meeting of the Board of County Commissioners.

Sincerely,



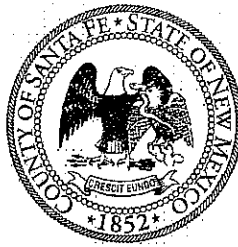
Katherine Miller, County Manager

NO PACKET MATERIAL  
FOR THIS ITEM

Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## BOARD OF COUNTY COMMISSIONERS

**CASE NO. V 012-5060**

**JAY SHAPIRO VARIANCE**

**JAY SHAPIRO, APPLICANT**

**CHRISTOPHER GRAESER, AGENT**

### ORDER

**THIS MATTER** came before the Board of County Commissioners ("BCC") for hearing on January 8, 2013, and then again on February 12, 2013, on the Application of Jay Shapiro ("the Applicant") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code ("the Code") to allow two dwelling units on 10.21 acres. After conducting a public hearing and hearing from Staff, the Applicant, and the Applicant's Agent, the BCC finds that the Application is not well-taken and should be denied and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Article III, Section 10 of the Code to allow two dwelling units on a 10.21 acre lot. Article III, Section 10 states that the minimum lot size in the Mountain Hydrologic Zone is 20 acres per dwelling unit with water restrictive covenants.

2. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. Therefore, it is considered a legal non-conforming lot.

3. There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure that was converted into a dwelling unit.

4. The accessory structure which was permitted on May 13, 2010, (Permit # 10-189) showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has now been converted into a dwelling with both kitchen and bathroom facilities.

5. Article II, Section 3.1 of the Code states that where in the case of a proposed development it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. It further states that a Development Review Committee may recommend to the BCC and the BCC may vary, modify or waive the requirements of the Code upon adequate proof that compliance with the Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. Section 3.1 provides that in no event shall a variance be recommended by a Development Review Committee nor granted by the BCC if by doing so the purpose of the Code would be nullified. Additionally, it states that in no case shall any variation or modification be more than a minimum easing of the requirements.

6. On September 20, 2012, the County Development Review Committee recommended denial of the requested variance.

7. At the public hearing on January 8, 2013, Staff recommended denial of the requested variance.

8. There were no members of the public present to speak in regards to this case.

9. The Applicant has submitted no evidence that supports granting his requested variance. He has demonstrated no unusual topography or other such non-self-inflicted conditions that would cause him extraordinary hardship from denial of his requested variance and has not demonstrated that denial of his requested variance would result in inhibiting the achievement of the purposes of the Code. Additionally, the Applicant has not submitted adequate proof that compliance with the Code provision at issue will result in an arbitrary and unreasonable taking of property.

10. The evidence, rather than supporting the granting of the requested variance, supports denial of the requested variance. The evidence shows that by signing the affidavit, the Applicant was well aware that a guesthouse was not permitted. And, by constructing a guesthouse the Applicant created a self-inflicted condition of hardship.

**IT IS THEREFORE ORDERED** that the Application for variance is denied.

This Order was approved by the Board of County Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

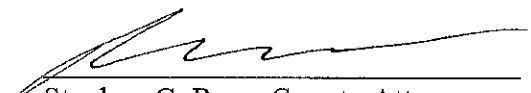
**BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**

\_\_\_\_\_  
Kathy Holian, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney



DRAFT

COMMISSIONER CHAVEZ: No, I don't have questions but I would go ahead and move for approval, hope for a second, and then we could continue with discussion.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay, I have a motion and a second for the Tavelli Master Plan Extension. Is there any further discussion?

COMMISSIONER ANAYA: Well, what I would – I was remiss. My motion would include all staff recommendations.

CHAIR HOLIAN: I don't believe there are any staff recommendations in this case. Is that true, Vicki? Other than the two years.

MS. LUCERO: Madam Chair, the application would still be subject to the conditions of approval on the prior master plan but we don't have anything additional.

CHAIR HOLIAN: I see. Thank you. Okay, I have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

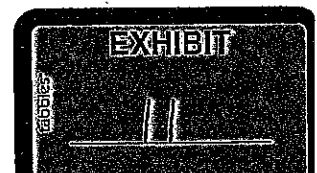
**XVII. A. 5. CDRC CASE #V 12-5060 Jay Shapiro Variance. Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4**

MS. LUCERO: Thank you, Madam Chair. On September 20, 2012, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the request. The applicant requests a variance of Article III, § 10, Lot Size Requirements, of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010 showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

"The State Construction Industries Division informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which the Agent states was approved by the Homeowner's Association. The Agent also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision,



and that the Applicant's guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit.

This application was submitted on February 21, 2012. Growth management staff has reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation: Denial of a variance from Article III, Section 10 of the Land Development Code. If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter the conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office. (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2.1)
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended Development Permit Application (As per Article III, § 2.4.1a.1(a) (iv).
4. The placement of additional dwelling units or division of land is prohibited on the property (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 NFPA Life Safety Code).
6. No more than two electric meters shall be allowed on the property (As per Article III, § 10).

MS. LUCERO: Thank you. I stand for questions.

CHAIR HOLIAN: Thank you. Are there any questions of staff? Is the applicant here?

CHRISTOPHER GRAESER: Mr. Shapiro is here with me. Mrs. Shapiro was here earlier but she had to go home and tend to the dogs. And I recognize that everyone gets to go home when we're done, so I will keep the billable time short, J.J.

This structure was permitted, permitted as an accessory structure. The issue here is essentially the kitchen and the permit did not include a permit for the kitchen. Mr. Shapiro has been upfront about that. However, the structure was permitted by CID, by Santa Fe County and approved. He did submit plans to the homeowners association that clearly showed a kitchen in there. The homeowners association approved it. There are six other lots -- at least six, there might be more -- in this small Monte de las Piedras Rosas Subdivision that have guesthouses, the majority of those with kitchens in the guesthouses.

He was assured by the homeowners association president at that time that the president has received a variance for his guesthouse. So it was with this background in good faith that he went ahead and built it out. There was a delay between permitting on it.

It took about a year. He had lost his financing and then actually the neighbors were complaining that the slab was there but the guesthouse wasn't there and he finally did finish it at that point and he put a kitchen in it.

So when he got the N of V he came right in and asked for the variance. What he's asking is just to keep what he's done, so he doesn't have to rip it out. He's not asking for a subdivision. I'll note that this is pretty close to the prior couple of subdivision variances this Commission just approved. But he's not asking for a subdivision. He will agree not to rent it out separately. That was the primary concern. You have a couple letters from a neighbor and that was a primary concern. It had to do with renting it separately. He'll agree not to rent it separately. He'll agree not to subdivide it. You had discussed a family use restriction. While we were sitting here Mr. Shapiro said he'd be okay with that. In other words it's truly just a guesthouse.

The staff conditions suggest – there's no current water restrictions. Staff conditions suggest limiting it to a quarter acre-foot per unit. And Mr. and Mrs. Shapiro are actually willing to go down lower than that. Maybe a little bit lower than a quarter acre-foot recognizing it's a guesthouse but certainly they don't need a full acre-foot. The concern is water use we can lower that.

The Fire Marshal has been out there, inspected it, has recommended approval with regard to fire issues.

Mr. and Mrs. Shapiro are long-time, established residents. They're not looking to make a buck and move on. Mr. Shapiro has been involved in a number of civic activities, volunteering time on the committee on constructing a new state parking garage, on the cathedral, St. John's College, things such as that.

Am I missing anything from my list here? We do have a little concern with how the agenda worked tonight. The item next to this on the agenda is another request for a variance for a guesthouse on the same road in the same subdivision.

CHAIR HOLIAN: Mr. Graeser, that has been tabled.

MR. GRAESER: I understand that. Our perspective is they probably should have been heard at the same time because it seems like they should both be treated the same. We're just concerned about any disparate treatment on those. So we would certainly be amenable if the Commission wants to withhold voting on that until it hears that other case next month as well.

That said, the Shapiros are certainly willing to consider any conditions the Commission might want to put on it to assuage any concerns and we think that agreeing not to rent separately addresses the primary concern of the neighbors. So if you have any questions I'm happy to answer them.

CHAIR HOLIAN: Okay. Any questions for Mr. Graeser? Okay. This is a public hearing. Is there anybody here who would like to speak on this case, either for or against? Okay, hearing none, the public hearing is closed. Are there any other questions for staff or the applicant?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you. Penny, would you answer a question about future code? The accessory structure right here is about – it says it's

approximately 1350 square feet. What do we have in our future code projected? A thousand or 1200?

MS. ELLIS-GREEN: Madam Chair, Commissioner Stefanics, it would be 50 percent of the building footprint of the principle residence or 1200 square feet, whichever is less.

COMMISSIONER STEFANICS: Whichever is less. So this would still exceed the 1200.

MS. ELLIS-GREEN: That is correct.

COMMISSIONER STEFANICS: So even under the new code this would truly be a variance.

MS. ELLIS-GREEN: That's correct. Actually, I misstated earlier. I think the second dwelling is less than 1200 square feet but it is larger than 50 percent of the main house, so yes, it would still require – it would not comply with the new code.

COMMISSIONER STEFANICS: Okay. Thank you very much. Madam Chair, I think that we have many properties throughout the county that have had accessory dwellings, second dwellings, whatever, built when people purchased them, not really knowing. It kind of goes back to the code of the west where people don't really know what they're allowed to have and not allowed to have. Now, that's a little bit different than people building and not coming forward. But I do think we're going to have more and more cases. We've already had several just in the few years I've been here but I think that –

CHAIR HOLIAN: Okay. Actually I have some questions. Are you finished?

COMMISSIONER STEFANICS: I am. I just find it very difficult to treat everybody equitably. That's my issue. And I'm looking at our attorney, because I would find that to be the standard that we try to adhere to. So I don't know. Steve, do you have any comments on this?

MR. ROSS: Madam Chair, Commissioner Stefanics, if it's any comfort to you, I think all these cases are unique on their facts, so there's always a little bit of difference, a little bit of shading between each and every case. They may seem similar on their face but there's always slight differences that are always very important. So I think we have to take every case as it comes. I'm not worried too much about how it looks on the outside.

COMMISSIONER STEFANICS: Thank you very much. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you. Madam Chair and Commissioner Stefanics, thanks for that question. Mr. Ross, thanks for that answer. I think the applicant's representative mentioned the next case that was unfortunately tabled and I hear the concern and I also hear – I studied the next case and it was tabled but I think this case is different from the next case. I have a couple questions as far as Exhibit 8. Whoever wants to answer these questions from the applicant. There was an affidavit and if you guys can explain to me on the affidavit why this affidavit was signed by the applicant and if they understood what they signed when they signed this affidavit?

MR. GRAESER: Madam Chair, Commissioner Mayfield, Mr. Shapiro had expressed to me that there was a little confusion what counted as a dwelling unit or not, as to whether that was a guesthouse or a principle house. That said, he was relying more on the fact that everyone else in his neighborhood, to his knowledge, who had a guesthouse, had been able to get a variance because the HOA president had told him that, so he didn't really think it would be a big deal if there was an issue of it going forward.

COMMISSIONER MAYFIELD: Give me one second to read this once again. And then sir, let me ask this, because he said he ran into somebody from the homeowners group and you indicated that he had a misunderstanding of the kitchen? That he was not going to put a kitchen into the second dwelling? I'm reading staff's letter to us. At the time of permitting the applicant signed a development affidavit saying the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling unit with both a kitchen and a bathroom facility. So if they had one or the other or if it had only just one?

MR. GRAESER: The plans that were submitted to the County showed the bathroom but not a kitchen.

COMMISSIONER MAYFIELD: But did it show anything else in lieu of the kitchen on the plans?

MR. GRAESER: I don't know that because I haven't seen them. Vicki, do you know? Did it show something in lieu of a kitchen on the plan? I'm sorry. I haven't seen the plan. I think it's shown as an office area. Madam Chair, Commissioner Mayfield, it's shown as an office area on the plans.

COMMISSIONER MAYFIELD: And that's what I recall from when I read that and thank you, Commissioner Chavez, for pointing that out to me. And then when I'm looking at – and I think it's – I guess the paper by the law firm that's representing the applicant. If I'm looking at Exhibit 1, and I'm looking at the third paragraph that was submitted, it says during the final design stages for the accessory structure, Mr. Shapiro, who is an architect, added an area for a kitchen, which was approved by the association. His plans submitted for a permit showed his original design without a kitchen.

I'm taking that on its own merit. Mr. Shapiro is an architect who I think would be more familiar with County design and permitting and everything else than arguably the average Joe who's coming into the review process with the County. Steve, I don't want to get myself into trouble by saying this but there is a little different standard by an individual who has an architectural background and should be understanding these and to be submitting this structure without a kitchen, saying it's an office and then signing an affidavit and then coming back after and changing the whole design. I think CID went back if I'm recalling what I read in here, came back and said wait a minute. When the CID came back and looked at it and said, you've put a kitchen in now. Is that how I'm recalling what I read in here?

MR. GRAESER: Yes, that's my understanding of it, Madam Chair, Commissioner Mayfield. Yes.

COMMISSIONER MAYFIELD: Do you know how all that took place?

MR. GRAESER: Again, the issue being that at least half a dozen other people in this small subdivision –

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COMMISSIONER MAYFIELD: But again, let's get away from half a dozen other people, because all these variances stand on their own merit. Because one of these other cases that you mentioned, I think, is somebody bought a house from a third party, not knowing what they bought with those permits. So that's a whole different issue on a whole different merit. But this is on this one applicant, who came in, got a permit. said there was not a kitchen, was an architect. Got the designs through, signed the affidavit stating it wasn't going to be there, and then came in and converted that. So that's why I'm having the hard time on making this decision on.

MR. GRAESER: Madam Chair, Commissioner Mayfield, I certainly understand that and I think Mr. Shapiro has been upfront that he put in a kitchen that wasn't allowed. I think it mostly comes under what my six-year old tells me when he says everybody else was doing it, and that's why we're asking not to have to rip it out but offering anything else we can to assuage the Commission's concern as far as restrictions or conditions on it. He's been upfront that he put in a kitchen that wasn't allowed.

COMMISSIONER MAYFIELD: Okay, so Madam Chair, Mr. Ross, thank you. Worst scenario, what would happen? The County would just say remove the kitchen if this was denied? I guess it could be appealed to a different court or something. But what's like the process if the County denied this?

MR. ROSS: Madam Chair, the process is exactly as you identified. Land Use staff, code enforcement would insist that the characteristics of the accessory dwelling that violate the code, i.e., the kitchen facilities, would have to be removed and disabled. His remedy, if he doesn't like that, if he doesn't like this decision or a subsequent code enforcement decision would be to appeal the decision of this body to district court. Once again, that's on a very narrow, highly deferential standard of review. In other words, if he gets over there it's very difficult to overturn a decision of this body.

COMMISSIONER MAYFIELD: Madam Chair, one last question for the applicant would be, so was the intent then straight up just to kind of do a bait and switch on the County on this? Or was the intent to build an accessory dwelling never to have a kitchen in it and then changed the mind at the last minute?

MR. GRAESER: Madam Chair, Commissioner Mayfield, to be clear, we're not talking about any legal action. Mr. Shapiro is going to accept whatever the Commission's decision is. I think he had a year to kind of sit on it. He got his approval and then lost his funding. He'd got the slab poured at that point. It was sitting there for a year and I think that's the time when he decided to do something different.

COMMISSIONER MAYFIELD: So, maybe, I'm just going to ask this question. You have the main residence that was approved. You have the accessory dwelling, 1300 and some square feet. What was the intent of the accessory dwelling without a kitchen? Was it going to be used as an office without a bedroom, with no kitchen?

MR. GRAESER: It certainly has bedrooms in it. I don't think there's any indication it was going to be used for anything other than guests. I think the difference is do your guests cook their own food or do they come in your house and cook? It's the kitchen area that's the point of contention.

COMMISSIONER MAYFIELD: Thank you. That's all I have, Madam Chair. Thank you.

CHAIR HOLIAN: Mr. Graeser, I have a couple of questions. I read in the packet that at one time both structures were rented out, so I wondered what is the case now.

MR. GRAESER: Those structures are not rented out now. That became an issue, having the woman staying in the guesthouse leave. It's not currently rented out. They live in a house and as I said they're entirely willing to a greater restriction that they can't rent it out.

CHAIR HOLIAN: Mr. Shapiro lives in the main house? Is that correct.

MR. GRAESER: Oh, you live in the other one? Sorry. My mistake.

CHAIR HOLIAN: Both dwelling units are vacant?

MR. GRAESER: Correct.

CHAIR HOLIAN: I think you'll have to come to the microphone or maybe Mr. Graeser can repeat what you said.

MR. GRAESER: He said because it's been vacant – it was my mistake. I misunderstood. I thought he was living in this but he's living in the other house they have. He's been vandalized four times since it's been vacant. No one's been there.

CHAIR HOLIAN: Okay, and can you tell me what Mr. Shapiro plans to do now with the units?

MR. GRAESER: I can't. Do you have plans?

CHAIR HOLIAN: Mr. Shapiro, either you have to repeat it or-

MR. GRAESER: I'm sorry. Just to save time, Mr. Shapiro is 72 years old. He's planning on retiring so I think selling this and a couple other houses and downsizing to the smallest one.

CHAIR HOLIAN: I'm sorry, Mr. Shapiro. You're going to have to come forward and be sworn in if you want to add something.

[Duly sworn, Jay Shapiro testified as follows:]

JAY SHAPIRO: Jay Shapiro.

CHAIR HOLIAN: Okay. What would you like to add, Mr. Shapiro?

MR. SHAPIRO: Just in response to the chair, what my plans were.

Unfortunately, when I did have a tenant in this house it was all predicated on the finances of today. My bank wouldn't give me a permanent loan because I had another house. They told me they could give me a commercial loan. So I went and I rented it to get a commercial loan. Then they told me I couldn't; it wasn't good enough. I had to have a three-year rental. So I went back to the doctor I rented it to and said, will you stay there three years? He said, fine. So we signed a three-year. I finally sold my other house. I built this house to move in to, and then when I sold my other house he still had two more years on his lease; he wouldn't move out because he had a lease. He was entitled to that. So I was somewhat homeless. I have a family. I have four dogs. I didn't know who was going to rent to me so I bought a small little house in the meantime, until May, which just ended and the doctor moved out and now I'm with two houses and I'm going to keep one and sell one, whichever one – I only need one house. I didn't intend – it's circumstances of today's economy. No one's hiring me as an architect. It's just the economy now.

CHAIR HOLIAN: Is this house on Cloudstone Drive for sale now?

MR. SHAPIRO: Yes, it is, but so is my own house.

CHAIR HOLIAN: Okay. Thank you. Thank you, Mr. Shapiro.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: I just want to make a comment as we go forward. In the other accessory dwellings that we have granted variances to it has been specifically for members of the immediate family. It hasn't been for resale value, which puts this in a totally different light than some of the other cases that we've been dealing with. And I think this makes me uncomfortable to grant a variance for sale or profit and I find that different than some of our other cases, and I'd like to hear what some of my other colleagues have to say.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Commissioner Stefanics, this probably is not any consolation but I think that on the other cases we're putting a restriction that I think is going to be somewhat hard to enforce. It's a limited restriction for two years or three years or five years, but what happens after that five years? We're back on the scenario that you're concerned about. And so I think that it has some bearing on this case, but in any event it's the property owner and right and due process to sell if they have to or when they need to. So I think the restrictions are making a statement but I don't think that it's really going to solve the problem of someone speculating by doing a lot split, whether it's done after the fact or whether it's done intentionally from the very beginning.

So I have mixed feelings about the restrictions that say you can't sell within three years, because it's short-lived.

CHAIR HOLIAN: Commissioner Chavez, I don't believe that's a restriction that was –

COMMISSIONER CHAVEZ: No, but on the other cases we were putting a restriction that said it's not to be sold or it's only to be rented to a family member for a specific length of time and then after that it's subject to the market.

COMMISSIONER STEFANICS: Madam Chair, on this point.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: In the area that I live in there actually has been some situations where there's been a house and an accessory dwelling that has been sold with language that says you can subdivide and make this two lots, and it never could be done. But it was sold under that premise. It couldn't be done according to our code. But people are buying properties like that. So this individual could sell their property and say it could be divided into two lots with these two dwellings and we would not approve it when somebody came forward.

So our actions could in fact set up a buyer beware situation. And this is the conundrum I'm feeling. It's like if we approve something are we in fact allowing somebody to come in and buy something that they can't do what they thought they could do with it? I have neighbors who cannot subdivide their properties with two dwellings. It's not allows.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: It seems that that's another restriction we've placed on some of these land use cases where we've said these lots can no longer be built on. You've locked it and said no additional structures will be allowed on this



particular lot. So I think in this case this would be one condition that could be placed on this.

CHAIR HOLIAN: Commissioner Chavez, that already exists, because it couldn't according to the County code. It's not an extra restriction.

COMMISSIONER CHAVEZ: So the density on this particular lot would not be able to increase past these two –

CHAIR HOLIAN: Not according to our code.

COMMISSIONER CHAVEZ: Okay.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Mr. Ross or Ms. Lucero, back on Exhibit 8 and Exhibit 10, can one of you give me a definition of a dwelling unit please. Maybe as the code has it if we have it in the code.

MR. ROSS: Madam Chair, Vicki, do you have the code definition? It's something that can be used for habitation.

COMMISSIONER MAYFIELD: For habitation.

MR. ROSS: Live in it.

COMMISSIONER MAYFIELD: Right.

MR. ROSS: That's the reason we were having the discussion earlier about the kitchen. If there's no kitchen there it's impractical or impossible to live in the place.

COMMISSIONER MAYFIELD: Right. So if we approved for Mr. Shapiro a permit for both structures, one's a dwelling, one's not, because he signed an affidavit as condition 3, right?

MR. ROSS: Right.

COMMISSIONER MAYFIELD: I'm back to Exhibit 8. The undersigned owner or their successors agree to the above listed on number 2, shall be constructed as per dwelling unit – or converted, excuse me, to any time into a dwelling unit. So what are we saying? We're approving it, but we're telling him it can never be converted into a dwelling unit. So Steve, help me out a little bit with that.

MR. ROSS: It's like an office.

COMMISSIONER MAYFIELD: Yes, but I asked that question of the applicant a little earlier. Well, guys, was it an office? Did it have bedrooms in it? We approved a structure that had bedrooms in it, it had bathrooms in it, it just didn't have a kitchen. But we're telling him he can never have it as a dwelling unit. So a definition of a dwelling unit is just – what, Steve? You don't sleep in it at night. You don't use it during the day? You don't use it at night?

CHAIR HOLIAN: So Vicki, do you have that definition?

MS. LUCERO: Madam Chair, Commissioner Mayfield, I don't have the definition in front of me but the definition of an accessory structure in the ordinance states that it can't be used as a dwelling unit and it can only have either a kitchen or a bathroom, but not both.

COMMISSIONER MAYFIELD: I know, and again, I'm not trying to be difficult on this, but what does a dwelling unit mean? You don't sleep in it over night? You don't cook in it? You guys approve plans. I don't have the plans in front of me but it definitely had bedrooms in it. It definitely had a bathroom in it. It just didn't have a

kitchen in it. But then later you say it can't be used as a – converted to dwelling. So, again, what does dwelling mean? He could have slept in it at night, right? It just means he couldn't cook in it?

MS. LUCERO: Madam Chair, Commissioner Mayfield, we're going to look up – get you the definition of a dwelling unit from the County code so if you can give it a couple minutes and we'll get that information for you.

COMMISSIONER MAYFIELD: Thanks.

MR. ROSS: Madam Chair, Commissioner Mayfield, I think you're hitting on the issue and that is restricting it to a dwelling unit means that one of those various functions that's required to create a dwelling unit – bathroom, bedroom, kitchen – all those have to be present. And I know that Land Use has always consistently said you can either have a kitchen or you can have a bathroom, but not both.

CHAIR HOLIAN: Mr. Ross, you mean for an accessory structure.

MR. ROSS: I'm sorry. What did I say? For an accessory structure. So if you take one of those elements out it's impractical, impossible, to actually live in the accessory structure, thus creating the restriction on permanent use that's consistent with an accessory dwelling, not a permanent dwelling.

COMMISSIONER MAYFIELD: And Madam Chair, while they're looking for it, Mr. Ross, would you still arguably, and I'm going to say have it hooked up to a wastewater system regardless if you had the kitchen or the bedroom?

MR. ROSS: Well, I guess you would have to have some means of disposing either or liquid waste or sewage if you had either a bathroom or a kitchen. But the whole idea is you don't have both.

COMMISSIONER MAYFIELD: And I'm sorry I'm just hung up on the word dwelling but I'm hung up on it.

MR. ROSS: Words like this you usually use the common sense definition because it's a fairly – it's not a legal term.

COMMISSIONER MAYFIELD: It's not. And I'm just saying, well, why are we issuing these permits?

MR. ROSS: Well, perhaps permanent was little bit –

CHAIR HOLIAN: Commissioner Mayfield, I believe the permit was incorrectly issued and that's why there's a condition in here that the applicant must amend the development permit.

MS. ELLIS-GREEN: Madam Chair, Commissioners, the dwelling definition in the code is 1) a structure or a portion thereof used, intended to be used, or that has been previously used by a person or persons for residential use; 2) a mobile home; or 3) each unit occupied by a person or persons in any structure or portion thereof used or intended to be used for residential purposes by a person or persons. Any such structure, mobile home or unit that contains both a) kitchen or cooking facilities; and b) a bathtub or shower shall be presumed to be a dwelling unit. Recreational vehicles do not qualify as a dwelling unit.

COMMISSIONER MAYFIELD: Okay, so that means, Madam Chair, it has both. Okay.

CHAIR HOLIAN: Right.

COMMISSIONER MAYFIELD: Thank you.

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CHAIR HOLIAN: Mr. Graeser, would you like to add something?

MR. GRAESER: Just a clarification and suggestion. The permit wasn't incorrectly issued. It was properly issued under the County code under that definition. The building had bedrooms. No one was hiding that, and the permit was issued for a building with bedrooms. These kind of things set people up to fail a little bit. But my suggestion is if the concern is further development or subdivision or anything like that we record a deed restriction allowing no further construction on the site and no subdivision, if that addresses those concerns.

CHAIR HOLIAN: Okay. Thank you, Mr. Graeser. Any further questions? What are the wishes of the Board?

COMMISSIONER STEFANICS: Madam Chair, I move to table.

CHAIR HOLIAN: Is there a second?

COMMISSIONER MAYFIELD: I'll second that.

**The motion to table passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]**

#### **XVIII. ADJOURNMENT**

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 9:22 p.m.

Approved by:

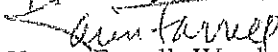
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Board of County Commissioners  
Kathy Holian, Chair

ATTEST TO:

GERALDINE SALAZAR  
SANTA FE COUNTY CLERK

Respectfully submitted:

  
Karen Farrell, Wordswork  
453 Cerrillos Road  
Santa Fe, NM 87501

**DRAFT**

~~COMMISSIONER STEFANICS: Madam Chair, I move that we come out of executive session having discussed only pending or threatened litigation and limited personnel issues. And present were the five County Commissioners, the County Attorney, the County Manager, the HR Manager for only a short period, and the Deputy County Attorney.~~

~~COMMISSIONER MAYFIELD: Second, Madam Chair.~~

~~The motion passed by unanimous [3-0] voice vote. [Commissioners Chavez and Anaya were not present for this action.]~~

## **XVI. PUBLIC HEARINGS**

### **A. Growth Management Department**

1. **CDRC CASE #V 12-5060 Jay Shapiro Variance.** Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, (Commission District 4) [Old Business, Tabled on January 8, 2013]

CHAIR HOLIAN: I will just point out to the people who are here that we heard this case before in great detail. We had the public hearing. The public hearing was closed. So Vicki, I wonder if you would give a short summary and then we can go into deliberations as a Board.

VICKI LUCERO (Case Manager): Thank you, Madam Chair. The applicant is requesting a variance to allow two dwelling units on 10.21 acres. They obtained a permit for the accessory structure and then converted it into a dwelling unit during construction. When the permit was issued the applicant signed an affidavit stating that it would never be converted into a dwelling unit but then proceeded to convert it to a dwelling unit.

Staff recommendation is for denial of the variance from Article III, Section 10 of the Land Development Code, and if the decision of the BCC is to recommend approval of the applicant's request staff recommends imposition of the conditions as listed in the staff report. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you, Vicki. Any comments or questions?

COMMISSIONER CHAVEZ: Madam Chair, I have a question for staff. Being that this is after the fact, the second accessory unit is already there. If we deny the variance what happens to that structure?

MS. LUCERO: Madam Chair, Commissioner Chavez, if the variance is denied the applicant will be required to remove the kitchen facility in the accessory structure. They will be required to pour concrete down the pipe so that it can't be utilized as a kitchen.

COMMISSIONER CHAVEZ: Got it. And do they have a bathroom and a kitchen or just kitchen facilities?

MS. LUCERO: Madam Chair, Commissioner Chavez, they actually have both in the structure right now.

**DRAFT**

COMMISSIONER CHAVEZ: They can have one or the other but not both.

MS. LUCERO: Correct. Yes.

COMMISSIONER CHAVEZ: That's all I have.

CHAIR HOLIAN: Any other questions, comments, motion? Well, I will make a motion then. I would like to move for denial of CDRC Case #V 12-5060, Jay Shapiro Variance. And the reason that I am making that motion is that I feel that the owner designed and built the guesthouse with the express purpose of going for a variance. I do not feel that it is a true hardship case. And he is now, or he always seemed to plan to rent out one or both of the structures. Is there a second?

COMMISSIONER STEFANICS: Madam Chair, I'm going to second, and I have a reason why I'm going to second. At the last full hearing we also learned that professionally, he works in this area of designing and building and he had signed an affidavit agreeing to the County circumstances, or the County agreement and I just believe that this was deliberate.

CHAIR HOLIAN: Okay. We have a motion and a second for denial of the variance.

COMMISSIONER MAYFIELD: Madam Chair, I have a question for staff, please. Madam Chair, Ms. Lucero, take me – do you have an exhibit of your denial letter to the applicant or request to the applicant for compliance?

MS. LUCERO: Madam Chair, Commissioner Mayfield, a letter of denial for this request?

COMMISSIONER MAYFIELD: Just to come into compliance to remove that kitchen.

MS. LUCERO: Madam Chair, Commissioner Mayfield, there was a notice of violation that was issued. That was basically the notification to the applicant that he was not following code requirements, that he was in violation.

COMMISSIONER MAYFIELD: And what exhibit was that please?

MS. LUCERO: It's not in here as an exhibit, Commissioner Mayfield. It's in the original permit file.

COMMISSIONER MAYFIELD: It was in the permit?

MS. LUCERO: Yes, that's correct.

COMMISSIONER MAYFIELD: Okay. Thank you.

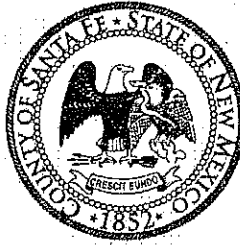
CHAIR HOLIAN: Okay.

**The motion to deny passed by unanimous [5-0] voice vote.**

**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. V 12-5280**  
**VARIANCE**  
**KIMBERLY MOSELEY, APPLICANT**

### **ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on February 12, 2013, on the Application of Kimberly Moseley (hereinafter referred to as "the Applicant") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres.
2. The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East ("Property").
3. Article III, Section 10 provides that minimum lot size in this area is 80 acres per dwelling unit. Lot size can be reduced to 20 acres per dwelling unit with signed and recorded water restrictions.
4. There are currently two dwelling units on the property, one of which is properly permitted and the second of which was permitted as an accessory structure.

5. The subject lot was created on March 2, 1976, and is recognized as a legal lot of record.
6. The Applicant stated that during their search for a home, they (applicant) were shown the property at 24 South Cloudstone Drive, which included a detached guest house with a full kitchen along with a main residence. The Applicant stated that the guest house was advertised as being permitted with a kitchen and approved for full time occupancy. The Applicant stated that their intention was to move her husband's elderly parents into the guest house to help provide assistance for them. The Applicant has expended substantial resources retrofitting the second residence for her in-laws, including re-flooring, installing pull bars and replacing the gas stove with an electric stove. Records indicate that the accessory structure was permitted on August 27, 1992 and converted to a second dwelling unit some time afterward.
7. In support of the Application, the Applicant stated that she is in agreement with staff's conditions.
8. The following conditions of approval were recommended:
  1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
  2. The Placement of additional dwelling units or Division of land is prohibited on the property.

- c. The Applicant shall comply with all Fire Prevention Division requirements.
  - d. The Applicant shall not rent out the accessory dwelling unit.
9. Article II, Section 3.1 of the Code states that where it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an Applicant may file a written request for a variance. It further states that the BCC may vary, modify or waive the requirements of the Code upon adequate proof that compliance with the Code provision at issue will result in an arbitrary and unreasonable taking of the property or exact hardship, and proof that the variance from the Code will not result in conditions injurious to health or safety. Section 3.1 provides that in no event shall a variance be granted by the BCC if by doing so the purpose of the Code will be nullified. Additionally, it states that in no case shall any variation or modification be more than a minimum easing of the requirements.
10. The Applicant did not knowingly violate the Code and acquired a property with a second dwelling unit for the specific purpose of having family live in the second dwelling unit.
11. The granting of the requested variance is a minimal easing of the Cod to address a non-self inflicted condition that would otherwise obstruct the use of the second



structure on the property as a dwelling unit rather than as an accessory structure for elderly family members who require care.

12. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow two dwelling units on 11 acres.

**IT IS SO ORDERED**

This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of February, 2013.

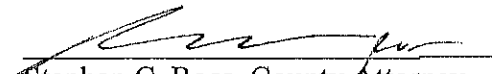
**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Kathy Holian, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

**DRAFT**

**XVI. A. 2. CDRC CASE # V-12-5280 Kimberly Moseley Variance. Kimberly Moseley, Applicant, (Rubin Katz Ahern Herdman & Macgillivray, P.A.) Frank Herdman, Agent, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 11 Acres. The Property is Located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East (Commission District 4)**

MIGUEL ROMERO (Case Manager): Good evening Commissioners. The subject lot was created in 1976, and is recognized as a legal non-conforming lot. The property is located in the hydrological Mountain Zone where the minimum lot size per code is 80 acres per dwelling unit. Lot size may be further reduced to 20 acres with water restrictions.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure that contains a kitchen and a bathroom. The main residence was permitted in 1999, permit number 99-090. On January 22, 1999, the previous property owners were written a letter by Santa Fe County Land Use staff stating that the kitchen facilities must be removed from the existing structure which is the guest house within six months of the main house being completed. This letter was agreed to and signed by the previous property owners.

On February 13, 2012, Santa Fe County Building and Development Services Department received a written complaint regarding the Applicants' second dwelling. On February 16, 2012, the Applicant received a Notice of Violation from Santa Fe County Code Enforcement for exceeding density requirements.

The Applicant states that during their search for a home, they were shown the property at 24 South Cloudstone Drive, which included a detached guesthouse with a full kitchen along with a main residence. The Applicant claims the guesthouse was advertised as being permitted with a kitchen and approved for full-time occupancy. The Applicant advised the sellers that as part of their search for a home, their intension was to move their elderly parents from California to provide assistance for them. In December 2010, the Applicant purchased the property at 24 South Cloudstone Drive. The Applicant feels the purchase of the property which included includes two dwelling units was misrepresented by the sellers by advertising two dwelling units.

On October 18, 2012 the CDRC met and acted on this case. The decision of the CDRC was tied at three votes to approve and three votes to deny. Under Commission rules of order the application was automatically tabled to the next meeting. On November 15, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 4-3 vote.

Staff's recommendation: Denial of a variance from Article III, Section 10, Lot Size Requirements, of the Land Development Code. If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Mr. Chair, may I enter these into the record?

CHAIR HOLIAN: Yes, you may.

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[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application (As per Article III, § 2.4.1a.1(a) (iv).
4. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).
5. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 Life Safety Code).

MR. ROMERO: I stand for any questions.

CHAIR HOLIAN: Are there any questions for staff? Okay, seeing none, is the applicant here?

FRANK HERDMAN: Madam Chair, my name is Frank Herdman. I'm an attorney here in Santa Fe and I represent the applicant in this particular case, Dr. Kimberly Mosely. And I want to introduce who I have with me this evening. I have Dr. Kimberly Mosely. I have her husband, Dr. Bill Doherty. They are both trauma surgeons at Christus St. Vincent Regional Medical Center, and I have Dr. Bill Doherty's parents. We have Harry Doherty and we also have Mary Doherty. And this case is about all four of them and the fact that they live together in a committed, loving and supportive family arrangement that this home and this property provides.

The first thing I want to do is make sure everybody understands that this case is nothing like the case that you just denied the variance for. Mr. Shapiro was asking for a variance very similar to this one and both cases are about kitchens. However, as you have recognized, Mr. Shapiro's situation was not, as one member of the Commission mentioned, was not a true hardship case and it was a circumstance that he brought upon himself. He was an architect. He signed an affidavit that he would not build a house with a kitchen, and then he proceeded to do that. And then he not only did that but he proceeded to rent the house. Our circumstance is nothing like that case. This case is a true hardship case.

Allow me to explain. As I said, this case involves a request for a guesthouse kitchen to remain in place, where it has been for more than 20 years. That's another reason this case is different from Mr. Shapiro's case. And it's not just any kitchen. This kitchen is an extremely important kitchen because it is critical to the living arrangement that allows Dr. Doherty and Dr. Mosely to care for and watch for Dr. Doherty's elderly parents, Harry and Mary Doherty who are here.

Dr. Doherty and Dr. Mosely moved to Santa Fe within the past two years to work as trauma surgeons at the hospital. When they relocated to Santa Fe they searched for a home that would allow them to care for Dr. Doherty's elderly parents and allow them to live close by so they could accomplish that. Harry and Mary are in their 80's. They have medical

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conditions that require someone to be watching over them. When they were relocating to Santa Fe Dr. Doherty and Dr. Mosely searched for a property that would allow Dr. Doherty's parents to live with them so that they could be cared for.

Dr. Mosely and Dr. Doherty were shown the property at 24 Cloudstone, which is the subject of this application, and it met their needs because it had a main house and a separate detached guesthouse that included a kitchen and was represented to them as a guesthouse that was fully habitable. The sellers understood the purpose for the guesthouse and the plan for these four individuals to live together so that Dr. Doherty and Dr. Mosely could care for Dr. Doherty's elderly parents.

The sellers assured Dr. Doherty and Dr. Mosely that the guesthouse could be used as a separate, full-time residence and so they proceeded to purchase the house. They spent a considerable amount of money making the guesthouse suitable for Dr. Doherty's parents. For example, they installed handrails in the bathrooms. They installed new floor covering, so the entire floor is level and handicap accessible. They replaced the gas stove and the range with an electric stove and range so that Harry and Mary would be safe in that home because they're both on oxygen. You cannot have a gas-fueled range or stove if you're on oxygen. They also replaced the kitchen appliances so that the kitchen was more accessible.

In March of 2010 Harry and Mary Doherty, they sold their home in California and they moved into the guesthouse where they have been living full-time every since. Dr. Doherty and Dr. Mosely live in the main house, which is 100 feet away, and they are able to care for and watch over Harry and Mary Doherty. Everything was going per plan until the County served them with a Notice of Violation, stating that the kitchen in the guesthouse had to be removed. This came as a complete shock to them because at no time were they ever made aware of the fact that the seller of the home, back in 1999, committed to the removal of that kitchen. And let me just explain. The guesthouse was first built in 1992. Then in 1999 the prior owners of the property built the main house, and when they built the main house they committed to the removal of the kitchen because the County's density requirements had changed since the construction of the guesthouse. But of course none of this was made known to Dr. Doherty and Dr. Mosely until they received the Notice of Violation.

So we're asking for a variance that would allow that kitchen to remain, the kitchen that has been in place for 20+ years. If the kitchen has to be removed then the current living arrangement will not work. It's no longer possible. That's because Dr. Doherty's elderly parents cannot depend on the kitchen in the main house for their cooking and living needs. Harry and Mary Doherty have limited mobility. The main house is 100 feet away. They can't be going back and forth three times a day. There are numerous steps leading into the main house. The main house has five different levels. All of the flooring is stone. It's extremely dangerous if they were to fall. And also they're on oxygen. The appliances in the main house are gas and so that would create an additional hazard.

So without the kitchen in the guesthouse the living arrangement and the care that is being provided for Harry and Mary Doherty will come to an end. So this is a true hardship situation that is not self-inflicted by the applicant. The variance criteria in this case have been met. The various criteria in the code have been satisfied. First, there is a very real hardship if the variance is not granted and the problem is due to circumstances over which Dr. Doherty

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and Dr. Mosely had no control. And again, that makes this case very different from the one that you just heard and for which you denied that variance.

In addition, there is no injury to health and safety as required by the variance criteria in the code. To the contrary, allowing the kitchen to remain in this house will promote health and safety by allowing this living arrangement to continue. And I want to emphasize that we are not proposing a new use. This is a use and a condition and a situation that has been in existence for in excess of 20 years. And I also want to point out that this very condition is a condition that will be permitted under the County's new Land Development Code once that is adopted. The County, under the proposed Land Development Code that is currently under consideration, the current draft has a provision that recognizes what I anticipate will be the County's policy that – and I'll quote from the new code. "Accessory dwellings are an important means by which persons can provide separate and affordable housing for elderly, single parents, and multi-generational family situations."

Under the new code this particular arrangement will become a permitted arrangement because the main house is 2,800 square feet, the guesthouse is 1,200 square feet, so it will satisfy the requirement that the guesthouse be no greater than 1,200 square feet and also that it be no greater than less than half the size of the main house. So the County is already looking forward in a way that recognizes the importance of the very living arrangement that you have before you in this case this evening.

I would also like to point out staff states in their memorandum that the variance criteria under the County code has currently stated does not consider financial hardship and in all due respect to staff and I appreciate the very hard work, I have in my hand a copy of the case of *Pauley v. Santa Fe County Board of County Commissioners*. And this is a case that was decided by the New Mexico Supreme Court that actually interprets the variance criteria that you would apply in this particular case. And that case recognizes the difference between what's called a use variance and a dimensional or area variance. An area or dimensional variance involves a deviation from a physical limitation imposed by the code and that's what this case involves. The Pauley case the New Mexico Supreme Court recognized that in situations involving an area or dimensional variance under the variance criteria at issue in this case, "Many factors may be considered in deciding whether to grant an area or dimensional variance, including the economic detriment to the applicant."

So financial hardship and economic detriment is something that you can consider and there's no question in this case that the economic detriment that would befall the applicants and this family arrangement would be catastrophic if you were not to grant the variance this evening, because it would terminate the end of this relationship. The property may have to be sold. Other living arrangements have to be made and so there would be extreme economic detriment which would be avoided by the granting of this variance.

Lastly, I want to point out one particular condition that staff raised in its memo, particularly condition #3 and that involves compliance with the Fire Department's requirement. If you look at the memo that was prepared by the Fire Department what the Fire Department observed is that the driveway to this home does not comply with current County requirements. Well, the history of that driveway – that driveway was built in 1992 when this guesthouse was originally built. In 1999 the main house was built. Both homes, both

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structures were built in accordance with County approved plans and both sets of plans show the driveway as it exists today.

Now, Buster Patty observed for the CDRC that that driveway cannot be modified. It cannot be made to comply with current requirements. This home is situation on – the lot is steep. The driveway switch-backs up the lot. If you look at the materials you have in front of you the lot is triangular in nature and you can see that that driveway switch-backs up that lot to the home at the top of the lot. There's no way to modify it. It is a use, however, that it compliant with the County's approval in at least two circumstances. So there's nothing that can be done about that driveway.

We have had discussions with Buster Patty. He has been extremely helpful. There have been discussions about installing a sprinkler system in the guesthouse. The main house already has a sprinkler system. But the point of fact is there's virtually nothing that can be done about the driveway. So we would request that that particular condition of approval be stricken. But we do ask that you grant the variance and I'm going to give Dr. Mosely as well as Harry or Mary an opportunity to speak to you this evening about why they would ask that you grant this variance so that their living arrangement can continue. Thank you, and I'll stand for questions.

CHAIR HOLIAN: Okay. Thank you, Mr. Herdman. And Dr. Mosely, please be sworn in.

[Duly sworn, Kimberly Mosely testified as follows:]

KIMBERLY MOSELY: Kimberly Mosely. I am the owner of the property at 24 South Cloudstone. My husband and I moved here to work at St. Vincents and the trauma and acute care surgery service. Part of moving here included the plan to move his parents here with us so that they could be very close and we could help care for them as needed. In looking for a home that was an important part of our search. We needed to be near the hospital. We have a 15-minute response time for traumas and we also needed a home where we could house another family.

We found that. It was represented as such and it really is essential for us to continue to care for them in the way that we planned to live together. The kitchen's been there for 24 years and we had no idea that it was supposed to have been removed in 1999. It really would be devastating to our family if we had to do that. I just can't really imagine what we would do. I really would just like to request that you grant the variance. We'll be compliant with the code as planned, I believe, and it really would be a tremendous help to us.

CHAIR HOLIAN: Thank you, Dr. Mosely. First of all, are there any questions for staff or for the applicant? I actually have a couple of questions. First of all, this is for Mr. Romero. Where does the requirement come from that the guesthouse can only have a bathroom or a kitchen, not both? Is it because of the particular location of this property? Or is this countywide?

MR. ROMERO: This is countywide. It depends on the acreage of the property, the location in the county you reside, as to how many dwelling units you're allowed. With an accessory structure, as you know, if you add a kitchen and bathroom it becomes a dwelling unit. So there is an ordinance in the Land Development Code under accessory structures that I believe indicates that information.

COMMISSIONER STEFANICS: On this point, Madam Chair.

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CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: On this point, Ms. Ellis-Green, in the new proposed code an accessory structure will be able to have both a kitchen and a bathroom, correct?

PENNY ELLIS-GREEN (Land Use Administrator): Madam Chair, Commissioners, an accessory structure would not, and it clearly states that accessory structures used for dwelling purposes are governed by another section but the proposed section is an accessory dwelling unit in the proposed code, and that would be able to be used for dwelling purposes and have a kitchen and a bathroom.

COMMISSIONER STEFANICS: So the difference is the name of the building?

MS. ELLIS-GREEN: Correct. An accessory structure is not to be used for dwelling purposes.

COMMISSIONER STEFANICS: But an accessory dwelling unit can have both a kitchen and the bathroom.

MS. ELLIS-GREEN: That is correct, and there's limitations on that in proposed code whereas everybody could have an accessory structure.

COMMISSIONER STEFANICS: Thank you very much, Madam Chair.

CHAIR HOLIAN: Thank you. And at closing on this property, I'm assuming that this information would not be passed on to a potential buyer for a property. Is that correct? This information regarding accessory structures?

MR. ROMERO: Madam Chair, Commissioners, the information would have been provided by the real estate agent, in this case advising them of that information which obviously was not. The information – if the individual applicant came into the Land Use Department and asked those questions we could answer that prior to possibly them buying the property or the house in the county.

CHAIR HOLIAN: But there would be no other way they would find out about it at closing? No official way.

MR. ROMERO: No, Madam Chair.

CHAIR HOLIAN: Okay. Thank you. So are there any other questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Madam Chair and I guess this would be for the applicant's attorney. Katz – there's no relationship between Rubin Katz attorney and Rubin Katz who sits on our CDRC Committee, correct?

MR. HERDMAN: Oh, Frank Katz?

COMMISSIONER MAYFIELD: Yes.

MR. HERDMAN: None whatsoever.

COMMISSIONER MAYFIELD: Thanks. And it is an exhibit, Exhibit 3. Your statement of this commitment was made known to my clients prior to the purchase of the property. Would you have recourse against the seller of this property for not disclosing this?

MR. HERDMAN: Well, recourse is a big question. Anybody can file a lawsuit. What are the odds of recovery? It's incredibly speculative. It would add to the economic hardship. It would prolong this problem, the outcome of which is completely unknown. And so that's a difficult – it's a question that's impossible to answer.

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COMMISSIONER MAYFIELD: Thank you. Madam Chair, question for staff.

MR. HERDMAN: Madam Chair, if I may while I'm standing up here. There was one thing that I meant to point out and that is I wanted to point out that the homeowners association restrictive covenants preclude the separate rental of a guesthouse separate from the main house. So there's an added layer of protection there already in place that would prevent a situation where this home, the guesthouse could be rented separately as a dwelling unit. Sorry that I forgot to mention that.

COMMISSIONER MAYFIELD: Well, and then on that point to staff, and I haven't got to your conditions yet but would that be one condition, that it would not be ever rented out as a guesthouse?

MR. ROMERO: We could add that as a condition.

COMMISSIONER MAYFIELD: Just food for thought on the back end. Let's go to staff exhibits – and let me just find it. Bear with me please. Staff Exhibit 9. I don't know if it's staff Exhibit; I'm just going to go to Exhibit 9. So Exhibit 9 is the January 22, 1999 letter and it was addressed to the initial applicant of the property, and I'm going down to numerous bullet points but one of the bullets points says the County will conduct periodic inspections to verify the compliance. And this is on the second dwelling. And then another bullet that I have highlighted was Applicant shall request a final inspection upon completion of construction. I'm going to flip the page. And then the last bullet is saying the kitchen must be removed from the existing structure within six months of the main house completion. So let me go back to the previous page. So do you know, and again, this is 1999. We're fortunate enough to still have the Land Use Administrator here in a different capacity. But do you know if those first two bullets were complied with? Did they go back and do the periodic inspections? And do you know if they did the final inspection?

MR. ROMERO: Madam Chair, Commissioner Mayfield, it is from my understanding that they didn't. And it really is unknown whether at the time they did or they didn't.

COMMISSIONER MAYFIELD: So we don't know if the County fulfilled its obligations of this at the time.

MR. ROMERO: Correct.

COMMISSIONER MAYFIELD: Okay. And then let's go back to the last bullet, and this is kind of – I just have a hard time digesting this last one because I'm reading the last bullet. So it's telling us the kitchen must be removed from the existing structure. But then there's a period break and then it says the cook-top, stove and oven must be removed, but the dishwasher and refrigerator can remain. So Penny, can you kind of help explain that one to me a little bit? So they're telling them to remove a kitchen but they're letting them keep half the kitchen.

MS. ELLIS-GREEN: Madam Chair, Commissioner Mayfield, I haven't seen a condition like that before. Usually, if we need a kitchen removed we request that the kitchen be removed.

COMMISSIONER MAYFIELD: So we don't do that anymore in the county, right?

MS. ELLIS-GREEN: I've not seen it before and I don't believe we do it now, no.



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COMMISSIONER MAYFIELD: Okay. Well, I just wanted to point that out because it was kind of a confusing condition back there. And then I'm just going to bring one point up. At the very front of Exhibit 3, because this is one of my peeves that I hope we address in the new code. And it is Exhibit 3, #9 on page 25, I guess if that makes any sense. \$300 for a variance fee and then in parens it's \$150. So we charge everybody a fee for a variance, and if this Commission would deny the variance, do we refund the money back to the applicants?

MS. ELLIS-GREEN: Madam Chair, Commissioners, no. This is an application fee and a review fee.

COMMISSIONER MAYFIELD: Well, let's just kind of keep that in mind for the new code. Madam Chair, that's all the questions I had. Thank you.

CHAIR HOLIAN: Thank you. Actually, I have a question for Buster Patty. Captain Patty, could you explain to me in condition #3 exactly what you mean by that? And whether that requires the driveway to be redone somehow, which everybody seems to agree can't be remedied?

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioners, the condition 3 about the driveway that cannot be – it topographically cannot be changed. The grade is as good as they can get it and they have worked on it quite a bit. It is still over-grade but in a case like this, that's where that Article IX, Section 902, 1997 Uniform Fire Code states that when you can't possibly engineer a driveway then we can ask for additional fire protection. That's why, back in 1999 when they did issue a permit to build a second house that's where we required the sprinkler system in that building.

CHAIR HOLIAN: Is there a sprinkler system in the building?

CAPTAIN PATTY: Yes, there is, in the house that was built in 1999, which is the main house. The other house was existing at the time; it was already built. So they did allow that with that driveway the way it was because it cannot be changed. It's impossible.

CHAIR HOLIAN: And by condition #3 here, you are asking them to add a sprinkler system to the guest unit?

CAPTAIN PATTY: We didn't ask yet because they already have one in there, but I have talked to them and they are looking into sprinkling the guest house. It's a retrofit, but on a flat-roofed house it's very difficult.

CHAIR HOLIAN: Okay. So could the applicant come up please? I'd like to ask a couple questions. Dr. Mosely, would you have any objection to putting in a sprinkler system, or do you think that would be an undue burden in the guesthouse?

DR. MOSELY: I don't know at this point how much it would cost. I'm actually looking into getting estimates right now. I have someone coming next week to take a look. We're certainly planning on doing it if we can.

CHAIR HOLIAN: Okay. Thank you. And another question I have is would you have an objection to another condition that if Dr. Doherty's parents no longer occupy the unit that you would remove the kitchen:

DR. MOSELY: Well, I have parents too, and while my parent's are younger than theirs potentially it would go in sequence.

CHAIR HOLIAN: So perhaps a condition that you would not rent the unit out?

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DR. MOSELY: That's already a condition of our homeowners association. It can't be rented separately. So that was never an issue.

CHAIR HOLIAN: Right. Thank you, Dr. Mosely. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair and Captain Patty, as far as sprinkler systems, and I know we've spoken about this on numerous occasions. What other options are there for the applicants besides maybe a wet sprinkler system? Have you let the applicants know that there are other options available to them?

CAPTAIN PATTY: In this case there isn't really any other options.

COMMISSIONER MAYFIELD: Is there a dry sprinkler system that's available to them?

CAPTAIN PATTY: A dry sprinkler system?

COMMISSIONER MAYFIELD: Isn't there some sort of foam they could use? Maybe –

CAPTAIN PATTY: They would still have to run the same piping. So if they're going to do that a wet system is the cheapest way.

COMMISSIONER MAYFIELD: That is the most economical?

CAPTAIN PATTY: Oh, yes.

COMMISSIONER MAYFIELD: I thought also, I don't know if it would be construction-wise but wouldn't an option be if we approved it for a bed and breakfast, they could have exterior doors, maybe. Windows that would break away.

CAPTAIN PATTY: There are options. We have to kind of weigh it out in different areas, making a call on that. We don't really see the occupants of this building being able to climb out of windows. The sprinkler system is a 13-D system which is an egress system only, which is only a 10-minute system to get them out of the doors of the existing house.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Thank you.

CHAIR HOLIAN: Okay. This is a public hearing, so is there anybody here from the public who would like to speak for or against this case, please come forward.

COMMISSIONER ANAYA [telephonically]: Madam Chair.

CHAIR HOLIAN: Oh, Commissioner Anaya. We can hear you.

COMMISSIONER ANAYA: I have a couple comments before the public hearing. I just want to say that I don't think the applicant, the owners have acted in malice in any way. I think they've acted in good faith in what they've done to this point and as was stated earlier, there's nothing like the previous case. And I don't think imposing a sprinkler system on a flat roof house – I think that would be an undue burden and expense. But I do think the condition that Commissioner Mayfield brought up does make sense. So those are my thoughts thus far.

CHAIR HOLIAN: Okay, Commissioner. We are doing the public hearing now. So is there anyone here that would like to speak for or against this case. Would you please come forward and be sworn in.

[Duly sworn, J.J. Shapiro testified as follows:]

J.J. SHAPIRO: I'm J. J. Shapiro. The Commission just turned me down five to nothing. I'm not here to speak for or against this application but I would like to state that this is my neighbor, right down the street. They bought this house from the past president of

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the homeowners. He personally came on my property and told me that he had a variance for his guesthouse for the kitchen. When I signed that paper I had no intention of putting in a kitchen. But when the president of the homeowners comes over and tells you he has a variance I took that to the bank.

So in good faith, this is the City of Faith. I hope you make a just determination. I cleared my land after I had a permit for the new restrictions from Mr. Patty. I widened my driveway, cut down two pinon trees so he could get access for his fire truck. So I just ask you to look into your hearts. You turned me down five to nothing. Could I put my folks into this house? I would have agreed to water restrictions. I would agree to not rent it out. I would agree to – my attorney got up to say something but he didn't get a chance. So this is again the City of Faith. I leave it up to you in good faith.

CHAIR HOLIAN: Thank you, Mr. Shapiro. Is there anyone else from the public who would like to speak? Seeing none, the public hearing is closed. Are there any other questions from the Commission? What are the wishes of the Board?

COMMISSIONER ANAYA: Madam Chair, I would move for approval of the variance with the condition added that Commissioner Mayfield brought up, if he could please restate that condition.

CHAIR HOLIAN: Commissioner Mayfield, would you restate the condition?

COMMISSIONER MAYFIELD: Madam Chair, the condition that I asked that this house would be afforded to move on to the other parents of the applicant but as the homeowners association have requested, that it would not be allowed to be rented out at this time unless our new code would allow that permission. And with that, I would second Commissioner Anaya's motion.

CHAIR HOLIAN: We have a motion and a second for approval of CDRC Case #V 12-5280 with staff conditions and the added condition by Commissioner Mayfield.

The motion passed by unanimous [5-0] voice vote.

~~XVI. A. 3. **BCC CASE # MIS 12-5420 College Park Master Plat Authorization. Univest-Rancho Viejo, LLC, Applicant, Jim Seibert, Agent, Request Master Plat Authorization to Allow for the Creation, of a Maximum, of Twelve Mixed-Use Lots on 77.4 Acres. The Property is Located on the Corner of Richards Avenue and Avenida del Sur, in the Community College District, within Section 20, Township 16 North, Range 9 East, (Commission District 5) [Exhibit 13: Revised Exhibit 3 – Maps]**~~

~~JOSE LARRAÑAGA (Case Manager): Thank you, Madam Chair. The College Park site consists of 82.78 acres. Currently, Bicycle Technologies International is being constructed on an existing six-acre lot within the College Park. Master Plan approval for 75.78 acres of this site was granted by way of the Village West Master Plan. 49.65 acres of those 75.78 acres are designated as an Employment Campus and Center within the Community College District. A Master Plan Amendment of the Village West Master Plan~~